

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
: Docket #03cv9685
MCCRAY, RICHARDSON, SANTANA, :
WISE AND SALAAM LITIGATION :
: New York, New York
: September 8, 2011
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PROCEEDINGS BEFORE
MAGISTRATE JUDGE RONALD L. ELLIS,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: In the matter of McRay, Richardson, Santana, Wise & Salaam Litigation. Counsel, please state your name for the record.

MR. MYRON BELDOCK: Myron Beldock, from Beldock, Levine & Hoffman, for the Salaam plaintiffs, as well as Karen Dippold.

MR. MICHAEL WARREN: Michael Warren, 580 Washington Avenue, Brooklyn, New York, appearing on behalf of plaintiffs Richardson, McCray, and Santana.

HONORABLE JUDGE RONALD L. ELLIS (THE COURT): Good morning.

MR. WARREN: Good morning, your Honor.

MR. BELDOCK: Your Honor, there is no one here on behalf of defendant, pardon me, of plaintiff Wise. That counsel understands that we will stand in for them and they may be able to come here, someone may be able to come here while we're in process.

THE COURT: From what my reports are this morning, everybody had a little trouble getting here.

MR. BELDOCK: They have another court appearance that they had to attend to, but they understand that we're proceeding without them.

THE COURT: We certainly will do that.

MS. GENEVIEVE NELSON: Genevieve Nelson, Assistant

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Corporation Counsel, for defendants. With me is Elizabeth Daitz and Philip DePaul. Good morning, your Honor.

THE COURT: Good morning.

MS. PATRICIA BAILEY: Good morning, Your Honor, Patricia Bailey.

THE COURT: Okay, good morning. First of all, with respect to the in camera inspection, I have not actually completed it. I did the unthinkable and took some time off. But I have started going through it and some questions have arisen as I was looking at them and I guess I want to direct this to the City so I know what it is that I'm looking at.

In some of the documents, there appear to be information that is listed and it seems to be based upon interviews. And I wasn't sure whether or not the person was looking at a video and summarizing it and that the plaintiff had the video, can you --

MS. DAITZ: Yes, your Honor, all the video tapes have been disclosed, they were disclosed in the underlying criminal trial and they were disclosed again in the civil litigation. To the extent that there are handwritten notes taken by the ADA defendants that are in the in camera brief set provided to the Court, there were handwritten notes taken during the ADA's subsequent review of the video tapes in preparation for the prosecution.

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THE COURT: Okay. All right, I may ask for further clarification when I'm totally finished but I don't anticipate that taking too much longer.

With respect to the dispute that has arisen more recently concerning the training materials in plaintiff request 66 and 67, I must admit that although I read the parties' submissions, I wasn't sure why you were having a dispute. It seemed fairly clear to me that at least on the basic underlying premise that the plaintiffs had set forth some requests for training materials, that the simple thing would be for the City to produce the training materials that were asked for. And I wasn't sure why that didn't happen. I understand that the City wanted some broader protection for other training materials, but it seemed to me those were separate issues.

MS. DAITZ: Your Honor, if I may, the City, by the City I mean the Corporation Counsel Office, collects training materials from the Agency, obviously to review and produce in connection with, for instance, this litigation. And when we collected the training materials, you know, there are thousands of pages that we collect at one time and some of them are, for instance, like a whole criminal investigations course manual or a whole detectives manual. So as they're being reviewed, we make a determination with respect to

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2 sections as to whether they are responsive to plaintiffs'
3 requests or whether there is something that although
4 plaintiffs did not request, we would be producing in support
5 of our defenses.

6 So they were reviewed and prepared for production
7 and asked and that's what we did in this case. And the
8 production is ready to go out, pending an agreement as to
9 their confidentiality. We don't understand why plaintiffs are
10 drawing a distinction in terms of confidentiality between the
11 documents that are specifically responsive to their requests
12 and documents that are produced in support of our defenses.

13 THE COURT: Okay, well I understand that but if I
14 understand the process as these things go with training
15 materials or other materials from some defendant or some
16 entity, there are sections, and you know which sections you
17 want to produce to the plaintiff, or sometimes it's the other
18 way around, you can designate which ones are responsive so
19 that the plaintiffs know which ones are responsive to their
20 requests 66 and 67. What you want to do is you want to
21 produce the whole thing and you don't want them to be not
22 subject to confidentiality, although it does seem to me, and
23 I'm not sure at some point the plaintiff didn't suggest this,
24 that you can designate them as confidential, the rest of the
25 training materials, and designate which ones are responsive.

MS. DAITZ: Well, your Honor, pursuant to the stipulation and protective order that governs discovery, it states, specifically paragraph 283, there are only two ways that a producing party can designate documents confidential that are not explicitly contemplated in the language of the stipulation. And that's either pursuant to an agreement between the parties, or to have the Court deem them confidential. So we can't just, under the stip we can't just produce them all with a confidentiality designation without an agreement in place.

THE COURT: Okay, let me just understand. You believe that the other training materials should be confidential --

MS. DAITZ: Yes, your Honor --

THE COURT: But you can't designate them as confidential without an agreement?

MS. DAITZ: That's what the stipulation says.

THE COURT: And is that the way it works?

MS. DIPPOLD: Your Honor, you are quite correct, they're two completely separate issues. The issue, the first issue we'd like resolved is we would like a response to our very specific document requests. We designated the issues we want to know about, we asked for the materials, we entered into an agreement with Corporation Counsel that they materials

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2 they produced in response to these requests would be
3 confidential. We have no problem agreeing that training
4 materials should be confidential, we just simply want two
5 things. We want them to respond to our specific requests,
6 which have been pending for a year and a half, and we want
7 them to give us an idea of what documents they're producing.
8 They say they're producing things from the "Police Students
9 Guide," fine, tell us that it's the "2003 Police Students
10 Guide," and that's enough, we'll agree that those documents
11 are confidential.

12 The problem is if they just produce 500 loose pages,
13 if you look at these guides, there is no way to tell what year
14 they're from or what particular course they're from. And we
15 just need the appropriate information so we can agree they're
16 confidential. We're not going to hand them out to anyone
17 else, we're agreeing they'll be confidential, and they can,
18 pursuant to the stip, although this is not the way I think it
19 should be done, they could just produce all 500 pages and then
20 we would challenge those that we think are not appropriately
21 subject to the stipulation.

22 THE COURT: Okay, frankly, it doesn't sound as if
23 you're that far apart. If I understand correctly, what the
24 plaintiffs want is they want to make sure that if you produce
25 anything they know where it's from and when it's from. And

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that if you had, for example, a training manual and it had a table of contents, you would designate which parts of the table of contents are responsive to what the plaintiff wants. And what you want to not have to do is to break it up into parts and do it piecemeal.

MS. DAITZ: Your Honor, if I may, with all of defendants productions that we've done, close to 80,000 documents to date, we have always made a production identifying the source of the materials being produced, what range of Bates numbers, what type of document, and we certainly intend to do that in this case. We're not just going to produce here are the training materials, but at the same time, to have defendants obligated to list out the dates and the years as a precursor to an agreement on confidentiality, is counterproductive and it is also counter to the explicit language of the stipulation which says that the receiving party, upon receipt of the document, has to list out whatever documents they feel are not properly designated confidential.

THE COURT: All right, counsel, I'm going to go out on a limb on this one, I'm going trust all of you, all right, I'm going to expect that what the defendants are going to produce is the training materials sufficiently designated and identified so that the plaintiffs know where they are. I mean if you're right, then there is no problem, then I won't hear

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2 from the plaintiffs that say they can't figure it out.

3 I suspect, and I don't know this for sure, that in
4 some respects what the plaintiffs already have, and I'll get
5 to that later, isn't sufficiently designated so that one could
6 make those kind of determinations. But I certainly expect
7 anything that you produce to them will be identified so that
8 they know where and when it's from. As to the parts -- but you
9 need to identify which ones are specifically responsive to the
10 66 and 67.

11 As to the rest of it, just it seems to me from the
12 point of view of efficiency, it makes sense for you to produce
13 and entire document, as long as the ones that are responsive
14 are designated. And so if the question is whether or not
15 you're going to get the plaintiffs' okay or the Court's okay,
16 I'm directing that you do it as a, I mean I wouldn't want you
17 to break up a training manual for the purpose of designating
18 when you could just tell the plaintiffs which parts of the
19 training manual are responsive.

20 So I would designate them as confidential, if the
21 plaintiff finds some that are particularly egregious, although
22 frankly I don't know why any of these things will ultimately
23 be a problem because I don't know that there would be somebody
24 particularly interested in them, but once the plaintiff finds
25 out which ones are responsive, if they think some of the

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2 others shouldn't be designated, then you can bring them back
3 up to me. I'm not going to review them myself, but if you
4 think that they shouldn't be so designated, rather than having
5 you, two, argue over it, we'll skip that step, I'll allow them
6 to designate them as confidential, if you think for some
7 reason they need to be undesignated or they need to be
8 available for some other reason, I'll reconsider that, but in
9 the meantime everything stays confidential if it's training
10 materials.

11 But the main thing is that the plaintiffs will have
12 a specific response to their request such that they can know
13 what it is that's responsive to what they wanted. I mean if
14 that's what they want, that's what they want.

15 MS. DAITZ: Your Honor, I'm just going to ask that
16 with respect to all productions of documents, and that both
17 parties be similarly obligated. I mean, for instance, I got
18 production from plaintiffs on August 31st that just said this
19 is supplementing Yusef Salaam's document production, with now
20 indication as to whether it was responsive to our requests, in
21 support of plaintiffs' defenses, responsive to a subpoena that
22 we served. So if defendants are obligated to parse through
23 productions to identify why we're producing the document, we
24 would just expect the same from all parties.

25 MS. DIPPOLD: I have no problem doing that, your

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Honor.

THE COURT: I'm glad you don't. Okay. All right, now, and the other issue which was related to that is I understand that the plaintiffs have some materials and the question was whether or not the plaintiffs should produce them, or whether or not the plaintiffs wait and see what you produced, and then produce what's not duplicative.

I'm torn on this one because I'm not so sure in the way they're being produced, whether or not the Plaintiffs would be able to make that determination, but in the interest of efficiency, I would like to have the stuff produced from the defendants, have the plaintiffs look at it, and then you can make your determination as to whether or not what you have is coextensive with the defendants.

MS. DIPPOLD: We're perfectly willing to do that. If there's anything -- the two volumes are right here, they're the "Criminal Investigation Course," and "Investigators Guide" from particular years. Once we see what the defendants are producing, if there is anything here that they haven't produced to us we'll gladly copy it and give it back, you know, send it to them.

THE COURT: Okay, just let me give you the source of my ambivalence, and that is that it seems to me that it may take more work and effort for you to do that than to just

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2 produce, I mean I don't know how many pages that you have, I
3 mean --

4 MS. DIPPOLD: Several hundred.

5 THE COURT: Well, you know, I mean if it's just a
6 question of the cost of reproducing --

7 MS. DAITZ: Your Honor, we could bear the cost of
8 the copying, I don't know that that's the necessary question,
9 it's just that, you know, as I said, we're producing parts of
10 certain manuals and parts of others, and to the extent that
11 they're not identified on their face by date or source, we're
12 providing that information to plaintiffs. But I think it could
13 be extremely arduous of a task for plaintiffs to make a
14 literal line by line comparison of those two manuals with the
15 500 pages of documents that we're producing. And in the
16 interim, your Honor --

17 THE COURT: Okay, other than the potential cost of
18 reproducing, is there any reason that you wouldn't just give
19 that to them?

20 MS. DIPPOLD: Mr. Beldock is suggesting that they
21 should be producing the things that we're asking for, plus if
22 they told me --

23 THE COURT: They're going to produce what you're
24 asking for, that's a different issue, the question is I mean
25 as often happens in cases, from some source or other the

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2 plaintiff may have some incomplete production. What we're
3 talking about now is what you have in your possession, which
4 may not be coextensive to what the defendants are going to be
5 produced, but that's a different issue. What the defendants
6 want is what you have as partials or undesignated, whatever,
7 if they are going to pay for the reproduction, I don't know
8 why you would object to it.

9 MR. BELDOCK: It's not exactly that, I'm responsible
10 for getting these documents in another litigation with the
11 City, they were given to me voluntarily without
12 confidentiality in another litigation with the City, with
13 other attorneys from the City. We've been trying to get
14 training material for a year and a half, we got those training
15 materials very easily from the other counsel.

16 MS. DIPPOLD: From the co-counsel.

17 MR. BELDOCK: From their co-counsel in the other
18 case, but Corporation Counsel was involved in it. We don't
19 understand why they've had such difficulty producing training
20 materials to us, why it's taken a year and a half or us to get
21 them. And at that point, we feel it's only fair that they
22 show us what they have been able to find, that we compare
23 them, and then we will obviously give them what we have gotten
24 elsewhere. It just seems wrong. Maybe I'm not making myself
25 clear to your Honor, but for a year and a half we've been

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trying to get training material, which in another case I got within a few weeks, if not months, from the City. The City has claimed they couldn't get any training materials or they couldn't find any training materials, there is something about this process which is unfair to us that bothers me.

You want us to give them to them now, we'll exchange with them, if necessary.

THE COURT: I do, and I want the City do exactly what you say you've been trying to do for a year and a half. I don't disagree with anything you said, and I understand that you each have your interests in doing things, but as I started out saying, it seems to me this is a simple question of you ask for stuff, you get it. I understand that in producing, when we're dealing with producing manuals and things, they're not necessarily easily separable, and it makes more sense to designate them, and whether or not they are going to all be confidential, I don't know why you couldn't agree on that, it seems to me it's a fairly simple thing, I put my imprimatur on it that I would rather have the stuff just be produced, give it to the plaintiffs and let the plaintiffs look at it. And you're obligated to do it, you designate it, I'm more concerned with whether or not what the City produces to you is sufficiently designated so that you can work with it. And if they do that, and they get copies of what you have, which you

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2 say was produced in some other litigation so I'm not even sure
3 why there's an issue about it.

4 MS. DAITZ: Your Honor, I just need to say for the
5 record that outside counsel for the City of New York produced
6 the training materials in the case that Mr. Beldock is
7 referring to. And I don't think that that necessarily bears
8 upon our ability to retrieve responsive documents from our
9 clients in this case.

10 But aside from that, I think what we all want to do
11 is move forward with the deposition that's been on hold
12 pending the production of training materials, and the City is
13 prepared to make the production under your Honor's ruling by
14 tomorrow, and assuming we can get the materials that are in
15 plaintiffs' possession so that we have an opportunity to
16 review them.

17 I mean if we proceed with depositions while they're
18 still doing this line by line comparison --

19 THE COURT: Okay, you understand right now that's
20 the process, so you're arguing what I've already --

21 MS. DAITZ: I'm sorry, I was unclear, your Honor.

22 MR. BELDOCK: We're prepared to exchange, your
23 Honor, but we don't want the City to have our documents before
24 they give us their documents. I know I'm sounding, I may
25 sound a little --

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THE COURT: You object to the exchange?

MS. DAITZ: No, your Honor, they'll have them tomorrow.

THE COURT: Okay.

MS. DAITZ: And we can send one messenger to Beldock, Levine and Hoffman to drop off our production and to pick up theirs.

THE COURT: You want them to meet midway like at a court someplace? Okay, I understand your frustration, Mr. Beldock, you've been asking for this for a year and a half, you should get it, and you will get it.

MR. BELDOCK: And why couldn't we get it right away? Why have we been delayed and having to do witnesses without that training material? It's an issue that I just want on the record, we'll take it up later if necessary.

MS. DAITZ: I need to also note for the record, your Honor, that the defendants interposed valid objections to plaintiffs' discovery requests, we did not receive a deficiency letter, it was not brought to our attention that they (indiscernible) our objection until at deposition, you know, ten months later where he renewed their request.

So I think it's not just that defendant should have produced documents immediately, if there was some dispute as to the nature of the request or the nature of the objection,

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2 it was incumbent upon plaintiffs to bring it to our attention
3 to facilitate that production sooner than what ended up --

4 THE COURT: Okay, all I'll say is this. All right,
5 I understand that we've had some stops and starts in this, but
6 at least I hope you understand if you bring it to my attention
7 I will decide it. And I looked at the correspondence, I
8 noticed sometimes when you are dealing with multiple people on
9 the side that causes issues, but I will say that Mr. Beldock
10 is correct that this is something that should have been
11 resolved a while ago.

12 It is not my habit to say what went wrong in the
13 past, what I like to do is to make sure we go forward, okay.
14 And as I see it, I expect the City to produce the documents
15 and designate them so that the plaintiffs can work with them,
16 and I expect that the plaintiffs will produce to the City
17 whatever documents they have that are related to the same
18 issue.

19 Is there any question about where I stand on this?
20 And again, I'm not going to try to reconstruct everything
21 that's gone wrong in the past. I know that we've had some
22 missteps, but at least I'm trying to get us now on the right
23 track. Let's hope that, and if anything else comes up, and if
24 there are any issues with this production I expect, I'm sure I
25 will hear about it. The only, my biggest concern so that

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2 you'll know is that this is my law clerk's last week, so some
3 other law clerk will come in and will not understand the
4 extent of the task on which they are about to undertake. I'm
5 not sure when I hired them I made it clear what the
6 responsibilities were. So, you know, I just want to make sure
7 they don't quit after a week.

8 But the basic thing is, look, somebody asked for
9 some documents in discovery, there's supposed to be some
10 dialog between the parties, if it doesn't work, you bring it
11 to me and it took more time than it had to, perhaps the
12 plaintiffs were more solicitous than they should have been,
13 maybe they should have brought it as soon as they weren't
14 getting what they thought they should have gotten. I'm not
15 going to blame them for that because I do like people to try
16 to work things out. But they're right and they should have
17 gotten it.

18 I understand the concern you have. Again, I don't
19 think it makes sense to try to take parts of manuals or other
20 kinds of materials and parse them out. I hope now we've worked
21 out the confidentiality issue, and I don't think it's as
22 simple as just telling, okay, here's the plaintiff, and you
23 work it out and tell us what's not right. But I do think that
24 once the plaintiff knows what it is that they have, what's
25 responsive to their request, they may, in fact, find that some

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2 of the things maybe shouldn't be confidential and maybe
3 they'll decide they don't want to make an issue of it. Because
4 unless until they want to do anything with it, there's no
5 problem with keeping it confidential anyway.

6 So any other questions?

7 MS. DAITZ: Your Honor, I have a separate issue with
8 your Honor's --

9 THE COURT: Broached already with the plaintiff?

10 MS. DAITZ: Yes, actually I -- oh, Ms. Boshnack is
11 here.

12 THE COURT: Did this come up in the last five hours,
13 what?

14 MS. DAITZ: No, your Honor, actually it came up back
15 in May, defendants had requested, initially we requested tax
16 returns from the plaintiffs, first we went to their economic
17 damages claims. The parties all reached an agreement that the
18 plaintiffs would instead produce, at least at this time,
19 releases for a particular type of tax document that is not
20 actually the full return, and all the plaintiffs have provided
21 them to defendants on a rolling basis, except for two
22 plaintiffs, Daniel Wise and Victor Wise. And Ms. Boshnack
23 informed me by email this morning that she now has Victor
24 Wise's releases, and that we would like to make a formal
25 application to compel those releases from plaintiff, Daniel

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2 Wise, which it's my understanding Ms. Boshnack doesn't
3 actually object to.

4 MS. BOSHNAK: We've been trying to get him to sign
5 off on them and send them to us, and --

6 THE COURT: You want the defendants to compel your
7 client because you can't get stuff from your client, is that
8 what I'm hearing?

9 MS. BOSHNAK: I'm okay with having the order to
10 compel him to do it.

11 THE COURT: I'm not so sure that that's what the
12 motion to compel is designed to do. Is there something I
13 should be aware of, should I --

14 MS. BOSHNAK: Just so that he understands that it
15 is something that he is required to comply with if he wants to
16 be able to have that portion of his damages attacked to his
17 claim.

18 THE COURT: Okay, it's just that I'm sitting here
19 wondering if I get a motion to compel from the Corp Counsel,
20 what kind of response am I going to get from the plaintiff?

21 MS. DAITZ: Hopefully it will be production of the
22 document.

23 THE COURT: Okay. Well, what I mean is this could
24 take some time unless what I get from the plaintiff is
25 something which short circuits the whole idea of briefing and

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2 the motions. Because if the idea is we want the plaintiff to
3 understand and comply, is this the best we can come up with, a
4 motion to compel?

5 MS. BOSHACK: Or I can convey to him that it was
6 discussed in court and if he doesn't comply there will be a
7 motion to compel or he'll be forfeiting that portion of his
8 claim, and perhaps that's a better way to go about it if --

9 THE COURT: Because I don't want this, I mean there
10 are motions to compel and there are arguments on the other
11 side. If we just have a recalcitrant person, and they don't
12 want to produce documents, and they don't understand the
13 seriousness of the request, then if they file a motion I don't
14 know that there is any response on the other side. So you can
15 tell your client that if the Corp Counsel has to file a motion
16 that might be too late for this process.

17 MS. BOSHACK: Okay, that's what I'll do then.

18 MS. DAITZ: Your Honor, we would just like a date
19 certain since we have been having this discussion since May
20 and the delay in getting us these releases and then, you know,
21 at no fault of any of the parties, certainly the IRS is not
22 prompt in forwarding its responses to the subpoenas with the
23 release --

24 THE COURT: Actually, now that I think about it, I
25 don't know that we need a formal motion to compel, is there

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2 any reason that the information should not be produced, do you
3 believe that it's not relevant, counsel?

4 MS. BOSHNACK: The only way it would not be relevant
5 is if he is not claiming those damaged, and unfortunately we
6 haven't been able to get that confirmation from him as to
7 whether or not --

8 THE COURT: Perhaps what we ought to do is we should
9 just do an order directing him to produce it, give you
10 something to do in your waning hours. We'll set a time limit.
11 How is the communication with your client I was just trying to
12 see what would be a reasonable timeframe? If you got an order
13 --

14 MS. BOSHNACK: What I'll do is I'll send it to him
15 by regular and certified mail, obviously I'll also try to
16 contact him by telephone, however, it's difficult to get in
17 contact with him. He lives in the same house as Delores Wise,
18 who is no longer represented by our firm, and so --

19 THE COURT: My question is, let me put this more
20 precisely, is two weeks too short a time, given --

21 MS. BOSHNACK: For the mail to arrive, I'll send it,
22 I can send the letter to him today or tomorrow, it will be
23 there by next week.

24 THE COURT: Okay, well we'll get the order out today
25 and you'll get --

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MS. BOSHNACK: So as soon as I get the copy of the order I'll send that out with a --

THE COURT: Okay, we'll make it two weeks from tomorrow.

MS. DAITZ: Thank you, your Honor, and with respect --

THE COURT: And that's, who is this going to be now?

MS. BOSHNACK: It's for Daniel Wise.

THE COURT: Daniel Wise, and you're satisfied you have the other or did you get it already?

MS. BOSHNACK: And I will bring over Victor Wise's either later today or tomorrow.

THE COURT: All right, we'll do an order on Daniel Wise. Anything else?

MS. DAITZ: Yes, your Honor, with respect to the plaintiff, Delores Wise, we just want it to be put on the record that we have been cc-ing her on all correspondence between the parties as a plaintiff pro se, and we did advice her in writing of this conference today, I don't believe she has appeared. And, as well, your Honor, we have requested that she appear for her continuing deposition on September 27th and that she confirm her attendance by the end of this week, but we haven't heard any response to that request yet.

THE COURT: All right, thank you, anything else?

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MR. WARREN: Yes, your Honor.

THE COURT: Mr. Warren.

MR. WARREN: Yes. Your Honor, I was elected to represent or to depose Officer Reynolds in this case, and Officer Reynolds is not a named party, but he's a third party witness. But he's a third party witness who had substantial contact and, in fact, was involved in substantial interaction in this case, not only involving the arrest of some of the people who were arrested, our plaintiffs, but also in terms of the activities that occurred within the Central Park precinct, itself.

He, for example, was part of two -- of two interviews that were conducted of witnesses in the Central Park precinct and was there at the time that Kevin Richardson was there, and was present with a detail of police officers that went to pick up Antron McCray. And during the deposition at some point near the end of the day, I became aware of certain communications that were made by Officer Reynolds, Detective Reynolds, to a blog which was a *Daily News* blog, in fact, it was a public blog. And I noted that in those communications he made references to defendants as being mutts, and, of course, I couldn't help from recalling the same characterization made by Detective McKenna in this case, who is a defendant in this case, in his book, in which he defined

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our clients as being mutts.

He also in his communications referred to gang of thugs, police wolf pack, chasing prey. He made negative characterizations about 100 Blacks In Law Enforcement, and he also made a statement in one of these communications about, about his belief that in spite of the convictions being vacated against our clients, that they were still guilty, that they were not innocent, they were still guilty.

And I think that, and, of course, let me just go on further, I made an application to question him, naturally, about whether, in fact, he was the author of the communications that were a part of this blog, and immediately Mr. Myerberg, who was representing him, the City represents him, notwithstanding his third party status, Mr. Myerberg refused or instructed him not to answer the questions.

Now, we would have, or I would have made an attempt to get a legal ruling at that time, and the only reason I did not is because of the lateness of the hour and the time that was allotted us or myself in terms of the total time for the deposition. And, of course, I didn't want to disturb your Honor at that time, but secondly we wanted to, in good faith we wanted to legitimately research the issue so that we could determine whether, in fact, the objection was unfounded. And in fact, we believe the objection is unfounded, there are a

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2 few cases which are cited in a correspondence of July 22nd that
3 was sent to your Honor, and in those cases, those three cases
4 or so, it specifically indicates that discovery, whenever the
5 issue of relevancy is at hand, that discovery is broader than
6 admissibility. And, in fact, these issues are relevant.

7 I am seeking from your Honor, most respectably, to
8 have this deposition reopened so that I can ask the vital
9 questions of Detective Reynolds whether, in fact, it's a
10 threshold question, you were the author of these
11 communications, which we firmly believe that he was. And
12 secondly, to ask other questions relating to those
13 communications, and perhaps other communications that have a
14 direct impact and effect on his credibility. And should there
15 be a trial in this case, then obviously those issues would be
16 gone into if he were on the stand and testifying as a witness.
17 And certainly I would like to be able to ask those questions
18 and continue to ask about those issues during the deposition.

19 If your Honor would indulge me for one second,
20 please. Also, your Honor, Mr. Beldock advised me that we have
21 the same problem with Officer Weir in terms of not being
22 allowed to go into IAB complaints. We believe that we should
23 be able to go into IAB complaints, anything that affects the
24 credibility of these officers. And, in fact --

25 THE COURT: Is that also one that's already taken

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2 place?

3 MR. WARREN: Yes. Yes. And, in fact, during the,
4 now that I recall, during the depositions of Officer,
5 Detective Reynolds, there are certain things that came out
6 during the initial part of the deposition, questions that I,
7 threshold questions that I raised, that ultimately resulted in
8 the revelation that he was facing or had faced certain
9 lawsuits, several lawsuits during the course of his career.
10 And I would like to be able to go more deeply into that area,
11 and one of those instances, one of the individuals who was
12 arrested in a case that he was involved in had been shot and
13 was in the hospital, and was in intensive care unit, and he
14 was sued because he, the man needed oxygen and he pulled the
15 oxygen mask off of his face in an attempt to do whatever. I
16 was not allowed to get further into that area. But it's these
17 type of inquiries that I think are legitimate inquiries. I
18 would like for your Honor to make a ruling. They're not simply
19 third party witnesses and even if they were third witnesses we
20 contend that we have a right to deal with their credibility,
21 and but this Officer Reynolds, Detective Reynolds is more than
22 a third party witness for the reasons that I've just
23 discussed.

24 THE COURT: I get the gist of what you're saying,
25 who wants to --

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MR. BELDOCK: Also civilian complaints, as well, Mr. Beldock.

THE COURT: Who wants to tell me the other side of the story.

MR. DEPAUL: Yes, your Honor, Philip DePaul. If I could just, for your Honor, bring in a little bit of content. These questions that were raised in the July 22nd letter of Mr. Beldock, refer to a message board, comments on a message board that Mr. Warren intends to ask Detective Reynolds.

He marked a ten-page document as an exhibit and then attempted to ask questions about that document. The comments in that document refer to the Sean Bell matter, an incident that is unrelated to this case, that occurred 17 years after the incident that's the facts and circumstances of this lawsuit.

Mr. Myerberg who was counsel at the time, directed Mr. Reynolds not to answer the question, not on the basis of relevance, but on the basis of it being harassment. Simply put, the questions don't go to Officer Reynolds' credibility, they go to harassment. They are basically questions of giving him to give opinion on a racially charged case, or asking his opinion on African-American people, in general, it didn't go to this credibility.

THE COURT: You don't think that those issues that

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you just mentioned, one's thoughts about racially charged cases and the African-American community would be relevant?

MR. DEPAUL: No, your Honor, it's -- one brief moment, your Honor. Your Honor, again, it's not relevant, it goes to the harassment of a witness about his opinions on a case that occurred 17 years after the incidents in this matter.

THE COURT: And I'm not sure why you think that that's not relevant, I mean are you saying that if he -- are these different opinions than he would have had 17 years ago?

MR. DEPAUL: Your Honor, I'm not sure, but --

THE COURT: I think you answered the question then didn't you?

MR. DEPAUL: What?

THE COURT: I mean, first of all, the direction not to answer a question, you really have to have it on, you know, it's very solid, I mean it don't think it was designed to make a motion. And the question of one's credibility and the issues that are swirling around in this case, certainly are, one can argue about what is and what is not relevant. It seems to me the question about what you can ask a witness in that regard in terms of his views, actually I'm not sure when or if they ever lose their relevance.

MR. DEPAUL: Additionally, your Honor, my colleague,

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2 Mr. Myerberg, attempted to raise this issue with the Court at
3 that time, many times in fact, at the deposition. Mr. Warren
4 replied he was going to reserve his rights on the issue. So
5 while we attempted to raise the issue with the Court to
6 resolve it at the deposition, plaintiffs' counsel decided that
7 they didn't want to, and then for over an hour played 911
8 calls. So it was -- it was our position at the time that we
9 could have resolved this --

10 THE COURT: Right, and you could have,
11 notwithstanding whatever Mr. Warren did, you could have raised
12 it with me, or he could have. I mean was there a direction to
13 the witness not to answer?

14 MR. DEPAUL: Correct, your Honor.

15 THE COURT: Once there's a direction to the witness
16 not to answer, you have it in your power to contact me,
17 regardless of what Mr. Warren does.

18 MS. NELSON: Well, your Honor, we did suggest that
19 several times to plaintiffs' counsel, we were at their
20 offices, their phones, they continued with the deposition. I
21 don't know that there was anything more for us to do barring a
22 ruling from your Honor.

23 THE COURT: Well, I understand that, I like people
24 to be civil, but as a legal matter, at that point you could
25 have said we're stopping the deposition and we're going to get

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a ruling from the Court.

MS. NELSON: I agree, your Honor, but as your Honor has pointed out to us on several occasions, that is not the alternative that you would prefer.

THE COURT: That's correct.

MS. NELSON: What we did was we put plaintiff on notice as to our objection, we had the witness not answer that question, and we moved forward at plaintiffs' preference. We shouldn't now be penalized that we didn't call your Honor because plaintiffs didn't want it. We certainly made our objection known for the record, we've made it known to plaintiffs several times.

THE COURT: Well what does the record show at that point, does the plaintiff say, okay, everything is fine, or does he say --

MS. NELSON: No, what the record shows, your Honor, is that plaintiff said we have other matters we would like to go through, let's go through them. They came back to the issue again, Mr. Myerberg raised his objection again, and that deposition ended without calling your Honor. And if I remember correctly we were still within our seven hours, so we didn't even raise that objection as a reason not to call your Honor.

MR. WARREN: Your Honor, I think that Ms. Nelson would have to agree that we all agreed at the eleventh hour

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2 that these issues would be collectively raised, as I
3 understand it. And again, you know, there were, these issues
4 were always on the table, and certainly it became aggravated
5 at the eleventh hour when we became aware of the transmission
6 to the -

7 (interposing)

8 THE COURT: What's this eleventh hour that we're
9 referring to?

10 MS. NELSON: -- I'm not sure what the eleventh hour
11 is you're talking about.

12 THE COURT: What time was it?

13 MS. NELSON: It certainly wasn't midnight, and we
14 were again still within our seven hours. And I won't agree
15 with Mr. Warren, Mr. Moore on several occasions stopped the
16 deposition over our objection not to answer a question, and
17 called your Honor. The issue got resolved, the deposition
18 continued, you know, consistent with your Honor's ruling.

19 And I just want to point out that during the
20 Reynolds deposition, at one of those times, we did raise the
21 objection and asked -- an instructed the plaintiff not to
22 answer it. That was a 5:20, pursuant to Mr. Fisher. Mr.
23 Warren said we're not going to deal with this now, we're going
24 to deal with it at the end of day, but not now, that was at
25 5:20, and by the end of the day we thought he was going to

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call the Court.

How this ended was we objected, we put our objection on the record, Mr. Warren ended the deposition, and we left.

MR. WARREN: Judge, that is not true. The --

MS. NELSON: But the record will --

THE COURT: Counsel, counsel --

MS. NELSON: My apologies, your Honor.

THE COURT: Okay. I'm, you knew where I was going on this?

MS. NELSON: Yes, your Honor, I apologize.

THE COURT: All right.

MR. WARREN: Judge, first of all, it not only applies to Detective Reynolds, it also applies to Officer Weir, as well. And at 5:20, I think the deposition ended at approximately 7:00, and we indicated once we became aware that there were other issues, that we would make these issues available by way of argument and that was in the letter that was sent from Mr. Beldock, at the appropriate time. Because given the fact that it had arrived 7:00 at the end of the day, that was, the time was about expired, and we felt that on that basis it wasn't appropriate to contact the Court at that time.

THE COURT: Okay, before you continue with this, before you continue with the procedural issue, let's deal with the substance of this. And the substance is this, okay, if you

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had these witnesses on the stand and the question came up as to whether or not they had been involved in these blogs, do you think the Judge would let that question come in?

MS. DAITZ: Your Honor, if I may, I'm sorry, Mr. DePaul, I would like to address that issue. I think the answer is not only no, but in this particular case, you know, there are hundreds of racially charged incidents in this City, particularly in the past 20 years. And to allow plaintiffs, with every single nonparty witness, when we're already talking over seven hours per deposition, to inquire about each witness' opinion as to each and every racially charged case, in the hopes that a witness might say something like, you know, I thought the officers' actions in the Sean Bell case were justified --

THE COURT: Okay, just before you continue with this, I will make it clear to you that I would never let a lawyer just ask a question out of the dark, that is just say, okay, what's your opinion on this. If a lawyer wants to ask a question, the first thing I'm going to ask him is do you have a good faith basis for believing that there is something here, and what Mr. Warren has told me is not just that he's asking people, okay, what's your view on the Sean Bell case, it's that you've written some very incendiary things, did you write this stuff? Or there are some very incendiary things written

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2 about this case, which was a racially charged case, which one
3 could argue might have some implications for how someone acted
4 in a racially charged case which they have very strong
5 feelings about.

6 Given that premise, given that intro, that's not a
7 fishing expedition, that's trying to find out whether or not
8 this person has some views which might affect how they would
9 react in a certain kind of situation. I don't see this as, you
10 know, just asking every witness what their views are.

11 MS. NELSON: Except that wasn't the foundation that
12 was laid, your Honor, Mr. Warren showed the witness and
13 exhibit, we read it, the witness read it, I think both Mr.
14 Myerberg and I went on the record to ask Mr. Warren if he
15 actually intended to ask questions about a blog concerning
16 Sean Bell, he said yes. He gave no other explanation.

17 If that is all, if we have a bare bones foundation,
18 other than what your Honor just gave us, we had not other
19 reason to believe that we should not instruct the witness not
20 to answer those questions. Mr. Warren did not lay that kind
21 of foundation. I'm sure it is in their application to the
22 Court, but that was not the circumstances under which we
23 objected to the questions at the deposition.

24 MR. WARREN: Judge, most respectfully, the whole
25 purpose in conducting a deposition is to establish if you have

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2 a reasonable basis that you believe supports asking a
3 question, it's to ask questions that are relevant for purposes
4 of further down the road being in a position, depending on the
5 response, to enlarge on that question and ask the same
6 question in the trial.

7 THE COURT: Before we get too much into philosophy,
8 what was the specific question that was asked that resulted in
9 the direction not to answer?

10 MS. NELSON: We'll find it, your Honor.

11 MR. WARREN: As I recall, the question was whether,
12 in fact, Officer Reynolds or Detective Reynolds, was the
13 author of that blog.

14 MS. NELSON: Actually --

15 MR. WARREN: Or the communications in the blog, I'm
16 sorry.

17 MS. NELSON: I believe there was a question about
18 whether or not Officer Reynolds created any blogs with
19 internet postings, then he answered those questions, and then
20 the reason for the objection though was have you ever made any
21 comments on any publication concerning the Sean Bell case?

22 THE COURT: Okay, so that was the question?

23 MS. NELSON: That was the question that led to --
24 that was the question that led to the objection. He certainly,
25 he answered the questions, your Honor, as to whether he ever

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2 made any publications on any blogs or internet posts.

3 MS. DAITZ: Also, your Honor, just reading from the
4 record, would point out that the defense counsel, Mr.
5 Myerberg, inquired of Mr. Warren as to what the relevance of
6 the line of questioning was prior to instructing the witness
7 not to answer, and the only response was credibility. And Mr.
8 Myerberg explained that the witness was a nonparty, and that
9 he, having reviewed the blog entry about the Sean Bell case,
10 did not believe it to be an appropriate area of inquiry. And
11 Mr. Warren simply said we are going to reserve our right.
12 There's no other statement on the record explaining, as
13 thoroughly as plaintiffs did in their subsequent letter
14 application, what the basis for their questioning was, and
15 what the good faith basis was for pursuing that line of
16 inquiry.

17 THE COURT: And this, you keep referring to it as a
18 third party, is this person a potential witness?

19 MS. DAITZ: He is a witness, he's a nonparty.

20 THE COURT: He's a nonparty witness.

21 MS. DAITZ: He's a nonparty witness, yes, your
22 Honor.

23 THE COURT: Okay.

24 MS. DAITZ: He was the arresting officer of certain
25 of the people in the park.

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THE COURT: And so just to be clear, as I understand it, the question here is whether to reopen this deposition for this line of inquiry, that's it, right?

MR. WARREN: That's correct.

THE COURT: Okay. Now what did you want to add?

MR. WARREN: No, as I said, there is a connection in terms of one of the terminologies that was used by Detective Reynolds, mutts, that was also used in public record in a book that as written by one of the defendants in this case, who worked with Detective Reynolds on this case, and that was Detective McKenna. And, of course, these are not questions that are simply asked out of a vacuum or asked harass, that's simply not the way we operate.

We had a basis for asking good faith questions, we would still like to and I would still like to expand on those questions and reopen this deposition, not only as it relates to his communications in a public blog that had what I considered to be significant relevance to this case, and his testimony as a witness in this case, but also, as I said before, questions relating to CCRB complaints against him, IAB complaints against him, the lawsuits against him. All these things are relevant in terms of his credibility as a witness. I mean counsel can't have it both --

THE COURT: I'm sorry, and you didn't ask those

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2 either?

3 MR. WARREN: We asked -- we asked some of them
4 initially, but we were not allowed to expand on them at an
5 point later on. And we decided that at the, when the
6 questions arose concerning the communications to the blog,
7 that we would raise all of these issues, especially since
8 Officer Weir was in a similar situation in terms of us not
9 being allowed to inquire into IAB complaints, that we would
10 raise all of these matters to the Court in a logical way in
11 the communication and have a hearing on the matter so the
12 Court could make a ruling. And Mr. Beldock can --

13 THE COURT: But I guess, but Ms. Nelson is right
14 though, other than saying credibility, you didn't really give
15 your full theory of why this was relevant.

16 MR. WARREN: Well, I indicated that, I thought I had
17 indicated, I don't have a copy of the transcript with me, but
18 I thought I had indicated that the relevancy related to his
19 credibility as a witness in this case, and if he were called
20 as a witness at a trial, that then credibility would be a
21 relevant issue. I don't remember the exact context, but
22 certainly it is relevant, your Honor.

23 And that is the issue that is before us today. It is
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25 THE COURT: And who's the other witness?

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MS. NELSON: Weir.

MR. BELDOCK: It was also James Weir, whose deposition I took, your Honor, but it's all, this discussion applies to all of the third party witnesses, police witnesses, third party witnesses who are former police officers involved in this case. We have been faced with the blanket objection in the Weir case, and in the Reynolds matter, by the Corporation Counsel, that they're third party witnesses so we can't go into credibility issues of this nature.

Now I just want to point out to your Honor that we didn't, we came upon this blog information quite close into, if not the day before the Reynolds deposition. One of the most key items on the blog we didn't discover till after the Reynolds deposition. These items should have been given to us in the first place, because that key item had to do with very case. And one of those, that internet -- that internet item had to do with his report to the public, to the people on his blog, about the arrests he made in this case, and what he considered about the defendants.

So this is not a singular issue, this is an across the board issue, and there is no way we should be prevented from asking them questions of this nature because they're third party witnesses. And what's more, they have asked the same questions --

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THE COURT: Counsel, counsel, counsel, counsel --

MR. BELDOCK: They have asked all kinds of questions of the same nature of our witnesses and of other witnesses.

THE COURT: Mr. Beldock, I have heard enough. Okay, with respect to the issue, and I think I understand the issue now and I understand eh defendant's objections and the question of whether or not the inquiry concerning attitudes that the witnesses may have is either too attenuated in terms of time or circumstance. I find that the inquiry is relevant, and my only issue, frankly, is whether or not it's generically relevant or that there is some basis for the inquiry. And while I would have, I think it would have been cleaner if the dialog between counsel had made clear what was going on, I understand that there was always some hesitancy on the part of counsel to have a colloquy and then reveal what it is that they want to ask questions about.

But it does seem to me that to the extent that there are blogs where people are expressing opinions concerning what have been termed by the parties racially charged incidents, that goes beyond just somebody's personal opinions. And to the extent that any witness has opined in public concerning these kinds of issues, I think that's fair inquiry.

That deposition, the Reynolds deposition, will be reopened on a limited basis to inquire about the blog. Yes,

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Ms. Daitz?

MS. DAITZ: Your Honor, given that the witness is a retire from the NYPD, and nonparty, and he has subsequent employment, we would request that the questions be, or the deposition be reopened via a deposition upon written questions, to see if there really is any need to bring back this witness for an entirely new deposition for this limited line of inquiry.

THE COURT: All right, are you saying -- well, before you make that application, show me you cannot accommodate this within the framework of a regular deposition. We're only talking about an hour here, or so, I mean I don't know.

MS. DAITZ: Well, your Honor --

THE COURT: I don't expect this, well, first of all, I don't expect this to be more than part of a day. Are you trying to tell me something different, Mr. Warren?

MR. WARREN: Not at all, Judge. I try to be very frugal with time and I like to deal with the issues as they are significant. So I don't intend to waste time here. I mean if there is something there, it won't be an all day deposition, I can tell you that. It won't be an all day --

THE COURT: The bottom line is this --

MR. WARREN: It won't be that.

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THE COURT: All right. If you, before you request a deposition on written questions, which I think, I mean, look, they're just not the same as a regular deposition. So if you, if there is some problem, you said, is he retired?

MS. NELSON: He is retired, your Honor, from the police department.

THE COURT: Does he live in New York? Does he live in New York?

MR. WARREN: He lives in New York, he's in, as I recall, he said he was in real estate, he lives in the city, he has no problems getting to a deposition --

MS. NELSON: I'm not sure if that question was asked, but fine.

THE COURT: Look, if you want to make that application, give me something more than just the idea that he's a third party and --

MR. WARREN: Well, your Honor, I will say that he, during the deposition, one of the questions I asked him was how many times did he meet with Corporation Counsel, at least ten --

THE COURT: You know, of course, at this point you're winning this issue, so I'm not sure --

MR. WARREN: I understand.

MS. NELSON: Your Honor, I just want to clarify so

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we all understand, the deposition is being reopened so that Officer Reynolds can answer questions regarding the blog that was marked as Exhibit 9 at the deposition?

THE COURT: Well, I guess that depends on where it leads --

MR. WARREN: Judge, I'm also seeking one other area that I've elaborated on.

THE COURT: So it's a good thing that she asked the question.

MR. WARREN: Judge, no, but we've already talked about this, the disciplinary matters, the lawsuits, these are extremely critical in terms of the credibility --

THE COURT: Now you said you had asked some questions along those lines?

MR. WARREN: Some questions, but I wasn't able to really expand.

THE COURT: When you say -- I'm sorry, when you say you weren't able to expand, what does that mean, you were prevented or?

MR. WARREN: Yes.

MS. NELSON: No. Let me just say --

THE COURT: Okay, Mr. Warren.

MS. NELSON: Mr. Warren.

THE COURT: Don't do that.

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2 MS. NELSON: Your Honor, Officer Reynolds was asked
3 about prior lawsuits, he answered all of those questions, Mr.
4 Warren moved on. According to Mr. Warren's statement in
5 court, is that he didn't get a chance to go back and ask more
6 questions. That is not what we should be reopening the
7 deposition for. He asked those questions, he ended that line
8 of questioning, and he moved on to something else. Now in
9 retrospect he wants to go back and he wants to ask further
10 questions. I don't believe that the Court should allow him to
11 reopen the deposition to be able to do that.

12 MR. WARREN: Your Honor, there were certain areas
13 that I attempted to inquire in, although certain answers were
14 provided, and I distinctly remember Mr. Myerberg instructing
15 him not to answer because he considered the answer to those
16 question to be, or those questions, themselves, to be
17 irrelevant.

18 And, your Honor, I think that again, that the, for
19 example, CCRB complaints, whether they were founded,
20 substantiated, IAB complaints, the fact -- I'm sorry, go
21 ahead.

22 THE COURT: Mr. Warren, I do not disagree with you;
23 however, I am not going to reopen the deposition for stuff
24 that you had an opportunity to inquire and then you stopped on
25 your own accord. If you want anything beyond what I've just

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ordered with respect to the blog --

MR. WARREN: Yes.

THE COURT: You show me in the deposition where you were prevented from asking.

MR. WARREN: Yes.

THE COURT: If you make that showing, we'll consider it. But this is not for you to get a second bite at the apple for things that you didn't go into in the detail that you would have liked or in retrospect you said, oh, maybe I should have asked this question. Only if you, if you can demonstrate to me that you were not allowed to explore those issues fully, that would be the initial showing. And then if you were prevented from asking, and I don't mean where counsel in a colloquy said, okay, I think that's enough, then we'll deal with the blog. Other than that, let's see what you've got for me.

MS. NELSON: One separate issue, from my understanding, Mr. Warren brought up three, which is the blog, the lawsuits and --

THE COURT: The CCRB.

MS. NELSON: The CCRB, and I believe Mr. Beldock also said Civilian Complaint histories. We've always put our objection on the record, actually very similar to what Mr. Warren is now asking for, which is substantiate/

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unsubstantiated, you've also added, of a similar nature, and we've allowed every single witness, including the nonparty witness, to answer that question.

We phrase our objection based on previous rulings that are published by your Honor, with respect to the production of CCRB and IAB disciplinary information. Apart from those objections, substantiated/unsubstantiated of a similar nature, we've allowed our witnesses to answer the question, and we certainly allowed Eric Reynolds to answer in this case.

So to have him go back again and revisit that issue, again, I think Mr. Warren has figured out in retrospect that there are other questions that he wants to ask, that weren't asked at the deposition. And that he had the opportunity to ask the deposition.

THE COURT: So that all the parties will understand, that will be the basic inquiry, from my point of view.

MR. BELDOCK: Let me just read something that's very pertinent.

THE COURT: Yes.

MR. BELDOCK: Because Ms. Nelson's memory is wrong.

MS. NELSON: Okay.

MR. BELDOCK: As I wrote in my letter or July 22nd to your Honor: "On Tuesday of this week in the course of my

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2 deposing former Officer Seamus Weir, Assistant Corporation
3 Counsel Elizabeth Dollin objected to my asking if there were
4 ever any civilian or IAB complaints made against him, and
5 whether he was ever disciplined as a police officer. Ms.
6 Dollin would not let him answer on the grounds that he was a
7 nonparty witness. This relates to my previous statement that
8 this is a universal problem we have, and Ms. Nelson is simply
9 wrong in her memory, and they are blocking us from asking
10 questions that should be easily allowed and should not be
11 blocked. That point is quite significant, because it doesn't
12 have to do just with Reynolds and Weir --

13 MR. WARREN: That's right.

14 MR. BELDOCK: It has to do with the next ten
15 depositions we're taking.

16 MS. NELSON: Let me just say, your Honor, we've
17 taken about between 20 and 30 of these depositions, we put the
18 same objection on the record every time, more or less, I've
19 been to every one of them. And we have allowed the witness to
20 answer every time. I think it is well past the time for
21 plaintiff to raise this objection, if they want to raise this
22 objection. And like I said, we base our objection on your
23 Honor's previous rulings on this issue.

24 The only thing we have asked is that the questions
25 be limited to a similar nature as the claims in this case --

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MR. BELDOCK: Judge, what I just put in shows that she's wrong.

THE COURT: Okay, counsel, I --

MR. BELDOCK: She's wrong though.

THE COURT: If there's -- if there is an issue of witnesses being directed not to answer, and I don't mean just objections, okay, then, you know, by all means bring those to me. I mean I would prefer that lawyers not object, but there is a difference between saying that you object to a question and directing the witness not to answer. Because I get these all the time, some lawyer says I object, then the lawyers says are you going to direct him not to answer, and he says no.

If you're telling me that you are asking questions concerning prior incidents about an officer and there was an objection, you'll have to point it out to me.

MR. BELDOCK: I mean but that's what I pointed out in my letter. That was one of the bases for this application, I'm pointing out, I specifically pointed out that Ms. Dollin prevented me from asking about civilian or IAB complaints made against Officer Weir. It's on the first page, it's in the second paragraph, it's exactly what happened, Ms. Dollin said I can't ask this of a third party witness, and Ms. Dollin said, directed him not to answer.

Now we're going to have this problem all the time,

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we shouldn't have it at all, these witnesses are not third party neutral witnesses, they are part of the police officers who were involved in this case.

THE COURT: Mr. Beldock, you do say that she would not let him answer on the grounds that he was a nonparty witness.

MR. BELDOCK: Yes.

MS. ELIZABETH DOLLIN: Your Honor?

THE COURT: Yes.

MS. DOLLIN: Elizabeth Dollin. I did attend Officer Weir's deposition, and I believe, and I don't have the transcript in front of me, that as Ms. Nelson had pointed out, I believe my objection was to limit or allow him to answer questions about IAB and CCRB complaints that were similar in nature and to a relevant time period.

Now I don't, your Honor, have that deposition transcript in front of me, but that has been our practice with respect to nonparty witnesses.

THE COURT: And why do you make a distinction, nonparty witnesses?

MS. DOLLIN: With all witnesses, your Honor, I'm sorry, with all witnesses.

THE COURT: Oh, okay.

MS. DOLLIN: And so I believe that that was our

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2 objection and our instruction, but I don't have the transcript
3 in front of me.

4 THE COURT: You didn't give me the transcript, Mr.
5 Beldock, did you?

6 MR. BELDOCK: No, I did not, your Honor.

7 THE COURT: Okay. Well, I'm not exactly sure
8 exactly what happened though. Mr. Beldock asked him about
9 complaints and you object, and then what happens?

10 MR. BELDOCK: Well, if my letter is correct and I
11 thought it was when I wrote it, I asked him if there were ever
12 any civilian or IAB complaints made against him and whether he
13 was every disciplined as a police officer. I hope I'm
14 correct, it hasn't been objected to on the fact, and Ms.
15 Dollin would not let him answer on the grounds that he was a
16 nonparty witness. And I was less concerned about Weir than
17 the principle, in general.

18 THE COURT: Okay. Then what is the objection to
19 that question?

20 MS. DOLLIN: Your Honor, again, I'm not sure that my
21 objection was, and I don't have the transcript in front of me,
22 and I also raised that this was not presented, this issue of
23 Weir was not presented to us when we had our meet and confer,
24 so I'm not fully prepared to discuss it.

25 However, it has been our practice with respect to

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2 witnesses, when they're asking, when the plaintiffs are asking
3 questions about IAB and CCRBs to please limit them to allow
4 them to answer questions about cases of a similar nature and
5 limited time.

6 THE COURT: Okay, before you continue, let me just
7 be clear about my position on this. While I might do that if
8 I'm asking, if the question is asking the lawyers to produce
9 the information, I might make some limitation and tell them to
10 say what's relevant. I don't have the same confidence in a
11 witness. That is if you're at a deposition, I don't think you
12 can ask the witness just tell me the ones that you think are
13 relevant or similar. I just don't think that works.

14 MS. DOLLIN: Your Honor, I understand. Again, we
15 based that objection on rulings from -- and we would, as Ms.
16 Nelson points out, we would know and point them out --

17 THE COURT: Okay, but again, just so you'll be
18 clear, if I got a request from a party, let's say a plaintiff
19 in a case involving a police officer, and they said give me
20 the police officer's CCRB. The first issue, sustained/not
21 sustained, I would say that's not going to get you not
22 producing it. If you said similar/non-similar, I might let the
23 lawyer make that distinction because, you know, depending on
24 what kind of, if the question was if I had a case involving
25 police brutality and the question was whether or not the

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2 police officer was accused of, you know, writing tickets, that
3 might be in play as to whether or not you're producing it.

4 But regardless of what I would do in terms of what I
5 would allow the lawyer to do for the City, in a deposition, it
6 just can't work. That is you can't ask a witness to give me
7 only the CCRB ones that are relevant because you're not
8 asking, that person can't make that determination. And so I
9 would not allow you to direct that witness not to answer the
10 broad question because I'm not going to allow him to make the
11 determination, him or her. And so at the deposition, it will
12 necessarily be broader because until the lawyers bring it out
13 or until, because there is no way, for example, I mean, for
14 example, if it's producing a production of documents, I mean
15 most of the lawyers on the plaintiff's side will say, well,
16 Judge, I don't want the defendant to make that determination
17 because they're going to be more narrow. And at least the
18 default is I can look it and I can determine whether or not
19 I'm going to allow it in.

20 At the deposition, it can't work that way because we
21 don't know what he's going to say and we don't know the full,
22 I mean it's not as if he says, okay, no, I don't have anything
23 relevant, that the plaintiffs' attorney is going to be able to
24 do anything about that. I don't think you can limit it at the
25 deposition.

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So I would say that whatever distinction the City was making in terms of those, I think we may have an issue that needs to be addressed here.

MS. DOLLIN: Your Honor, I would point out that, again, I don't have a transcript in front of me, but I believe at the Weir deposition, plaintiffs' counsel was asked to allow and did ask questions like were you ever charged with theft as a member of the NYPD, were you ever charged with other, and he was allowed and he did answer those specific questions as to whether you were ever charged with theft, with whether you were ever charged with acting dishonestly. Those questions were asked and answered.

So I hear what the Court is saying, but I don't want it to appear that we just blocked the plaintiffs entirely, we did not.

THE COURT: Okay. Well the bottom line here is that at the deposition I expect the questions to be asked and answered more broadly, and that is I don't expect if you are asking a police officer about his disciplinary record, that there be directions not to answer. Because there is no way for us to determine ahead of time which ones are going to lead to relevant evidence, because I don't know what's in it.

MS. NELSON: Your Honor, I do understand your ruling, and once the witness answers that question and it is

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2 clear from the nature of his answer that it's, really, it's
3 not relevant, how much further does he need to go into that
4 line of questions? If he says, your Honor, have you ever been
5 disciplined by the police department; yes, I have, I lost my
6 shield, is that sufficient?

7 THE COURT: If he lost his shield?

8 MS. NELSON: Well, it's clearly -- it's clearly an
9 issue that is not relevant, whatever the issue may be,
10 whatever he was disciplined for.

11 THE COURT: The problem, Ms. Nelson, is I don't know
12 whether I could even answer the clearly question in the
13 abstract. So I'm not going to -- I'm not going to say, okay,
14 for the plaintiffs, you know, you have carte blanche, I'm not
15 going to say to the defendants if it's clearly not relevant,
16 because I don't know what that means.

17 MS. NELSON: Okay.

18 THE COURT: Because I don't even know the context in
19 which it's going to arise. I would say that you can anticipate
20 that, I'll err on the side of allowing it, because it's
21 discovery. And I don't, I mean we're not talking about, and I
22 think this came up in an earlier conference, we're not talking
23 about information that is locked in a safe someplace. I mean
24 at this point if there is something that needs to be
25 confidential, you can argue about that, but as to whether or

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2 not we're going to allow questions about it, it seems to me I
3 don't know how we're going to make any determination about
4 what can and can't be considered relevant.

5 MS. DILLON: Your Honor, I think that the only thing
6 that the defendants, and I understand the difficulty in, you
7 know, ruling in the abstract and sort of putting it in context
8 is, I just think that what we're trying to avoid is mini
9 depositions on completely unrelated incidents where the
10 allegations in either unrelated lawsuits or unrelated CCRB,
11 are delved into to a significant extent in terms of who --

12 THE COURT: Well, look, if any of the plaintiffs'
13 lawyers spends two hours talking about that and they lose
14 their seven hours, that's on them. If they want to spend time
15 on stuff like that, and the seven hours is up, the seven hours
16 is up. They won't be able to convince me that they need any
17 more time. I mean at some point the lawyer is their own --
18 their own limit as to what, I mean understand that for me the
19 questions you're asking become difficult because I could never
20 see myself spending two hours on something which I wouldn't
21 thin would be relevant. And I give everybody the benefit of
22 the doubt that no lawyer is going to spend time just for the
23 sake of spending time, they made their determination of what's
24 relevant, and what you think is relevant may be different, but
25 by and large lawyers spend time on what they think is

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2 important.

3 But as I said, you might disagree on what's
4 important, but if they think that spending time on one
5 particular complaint is warranted, and that takes away from
6 their ability to ask something else, they may, you know, they
7 may find that the seven hours is up and then they'll say we
8 want additional time and they'll come to me and I'll say,
9 well, you know, that ship has sailed.

10 MS. DILLON: Your Honor, I think that's just what I
11 was trying to establish was that the Court's ruling that
12 inquiry into disciplinary history, CCRB history, other
13 lawsuits, are presumptively relevant for the purpose of the
14 deposition, does not mean that that's grounds to ask those
15 questions in hours seven through nine of the deposition.

16 THE COURT: I think, I mean if, I've said what I've
17 had to say about it, I am assuming that all the lawyers here
18 are going to use their time, considering all the disagreements
19 that we've had, you know, you are always going to have the
20 burden of demonstrating to me that you didn't get to ask all
21 of the important questions. And so I always tell lawyers
22 this, if you have any question about what's the most important
23 questions, ask the most important questions first.

24 I mean we were talking about Mr. Warren before
25 deferring, I mean if he wants, if he wanted to talk about an

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2 hour about some CCRB thing, he'd better do that not in the
3 beginning and use up his seven hours. And so I think the rule
4 is there for the reason that we don't want lawyers thinking
5 that they can say and do whatever they want and take up the
6 time of a witness.

7 So, you know, you can be judicious in your use of
8 time and that's the limitation that people have.

9 MR. BELDOCK: Judge, can we speak some more about
10 time now, your Honor, I think we're through. I hope we're
11 through with this issue.

12 MS. NELSON: Just two more very small matters, Mr.
13 Beldock, and one is, your Honor, from your Honor's ruling, I
14 don't know that I should assume, but we can raise issues
15 regarding individual witnesses that are coming up for
16 deposition, in the event we seek ahead of time that we need to
17 move for a protective order or something else we cannot agree
18 with plaintiffs once we confer?

19 THE COURT: You lose none of the rights that you
20 have under the federal rules, and I think that's one of them.

21 MS. NELSON: Thank you. My, but the other thing I
22 want to discuss is the limitations to the Reynolds deposition.
23 In light of what your Honor said, I don't believe that we were
24 out of our seven hours, but we certainly didn't have an hour
25 left. And if all the deposition is going to be reopened for

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2 is so that Mr. Warren can inquire into its Exhibit 9, then I
3 don't believe that the deposition should be extended for an
4 hour.

5 MR. WARREN: Judge --

6 THE COURT: Okay. All right, the way I answer that
7 question is always this way. I'm not a big fan of limiting
8 depositions, per se, because it gives one side or the other
9 the opportunity to say, if I say well you get an hour, then
10 the other side says, well, we'll take an hour. And by the same
11 token, the side that's defending can stretch it out and then
12 it gets over the hour.

13 As long as Mr. Warren has traction in his questions,
14 then he'll be on safe ground. If, whoever, depending on the
15 deposition, says, you know, gets to the point and they think
16 Mr. Warren is just harassing the witness and he's not asking
17 anything that's really productive, then, you know, stop the
18 deposition, call me, we'll answer that question.

19 But I don't know where it will lead. I mean he could
20 start asking him about the blog and, you know, the next thing
21 I know, there's a whole area of inquiry that opens up that's
22 going to be even longer than the blog inquiry.

23 MS. NELSON: Okay, but my understanding is that the
24 deposition is going to be reopened for inquiries into the
25 blog.

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THE COURT: And anything that reasonably that leads to, because I don't --

MS. NELSON: The blog, you mean?

THE COURT: Right.

MS. NELSON: I understand.

THE COURT: Right, I mean if, he might talk about the blog and then he starts talking about a tweet and a book he's drafting, and --

MS. NELSON: Well, your Honor, that actually brings up the other issue that I want to raise, which was the documents which were found after the deposition. The blog is available to everyone, it wasn't our obligation to produce to plaintiff documents that were publicly accessible. To the extent those were not ready and available at Mr. Reynolds' deposition when he did his first sitting, I don't believe that plaintiff should then get another bite to ask him about documents that they did not locate before his deposition that we did not obstruct them from locating.

THE COURT: Okay, unfortunately, in the electronic age, things like this can happen. I'm not going to prevent them from asking questions about stuff which they discovered afterwards and I'm not going to blame you for not giving them any information. Because the problem, and this is the difficulty we have when we start to have people make

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determinations about what's relevant.

I understand your position, and if I understand your position, even if you knew about it you would not have produced it because you wouldn't have thought it was relevant.

MS. NELSON: Well, no, it's not in our possession, custody and control, your Honor.

THE COURT: Well you would not have identified it -- well, if you have a witness and the witness has something, you might, you might feel that you ought to reveal things about the witness. I mean if the witness had written a book, you don't think you would let the plaintiffs know.

MS. NELSON: I think they are aware of all the books that were written, your Honor.

THE COURT: My point is though that I don't think that I can -- I don't think it makes sense to limit someone based upon information which seems related to what I opened the deposition for. Are you saying what they've discovered is completely, is something entirely different?

MS. NELSON: We don't know, your Honor. At the deposition we asked Mr. Warren to mark as exhibits those documents that we were objecting to that he wanted to reserve his right on. He marked Exhibit 9, he marked nothing else. And pursuant to the application that the plaintiffs made, they found it after the fact. They found other information after

1 the fact that they now want to inquire into at this sitting.

2 THE COURT: Okay. Well, I guess there are two ways
3 to handle it. I don't know what it is that we're talking
4 about, Mr. Warren, but you can either, you can let me know and
5 I can rule on it ahead of time, or you can run the risk of
6 this becoming an issue.

7 MR. BELDOCK: I covered this in my letter, Judge.

8 MR. WARREN: It's in the letter, Judge.

9 MR. BELDOCK: I've already, I mean this is totally,
10 this is such nitpicking. I said one such internet document,
11 one of two which we did not discover until after Reynolds'
12 deposition was ended, and which was not, and should have been
13 produced by defendants in response to the notice and subpoena
14 for Reynolds' deposition, in which we asked for any and all
15 materials, in any form he may have, related in any way to the
16 subject matter of this case, pertaining to discussion about
17 his involvement in the initial arrests of the five persons
18 including two of the present plaintiffs outside Central Park
19 on the night of the event. I mean that we are being --

20 THE COURT: Mr. Beldock, Mr. Beldock --

21 MR. BELDOCK: That we are getting to this level of
22 debate --

23 MR. WARREN: That's right, I mean we're being unduly
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2 THE COURT: Counsel, counsel, okay. All right,
3 let's not forget rule number one, when the Judge starts
4 talking, you have to let the Judge finish. Okay. In that
5 regard, if, if what you're telling me, and understand, when
6 you, when the parties are talking, you're a lot more familiar
7 with what you've said to me than I am, because I'm not as
8 focused on what it is. And if what you're saying is that this
9 is information that should have been produced because it
10 already related to his testimony, and I don't know exactly
11 what it is, so it doesn't register the same way to me, that
12 will come out at the deposition, I'm sure. But you have not
13 let the Corp Counsel know what it is that you've discovered
14 that should have been produced?

15 MR. BELDOCK: We've given it to them.

16 THE COURT: Oh, so you know what it is.

17 MR. BELDOCK: It's part of my letter.

18 MS. NELSON: I understand that, but if there, part
19 of our objection, first, is that we should have produced it.
20 So my interpretation of that is that we now need to Google
21 every witness that we produce in order to give plaintiffs what
22 are publicly available. The document that they said they found
23 after Reynolds' deposition was something that was publicly
24 available on the internet. And apparently they found it
25 pursuant to a search that they did after his deposition. I

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don't think that they should have the right to inquire into anything that they found after his sitting where we opened this deposition for a limited purpose. We asked Mr. Warren to mark those documents that he intended to seek relief from the Court, he marked Exhibit 9. If the deposition is going to be reopened, it should be just issues limited just to Exhibit 9.

THE COURT: Okay, I disagree. You get to, if -- look, I'm not -- search engines can find stuff, you can do searches, you can find stuff, if you do it on Goggle it might come up, if you do it on ask.com, it might come up. If you don't put in the right search terms, it might not come up.

Look, this is not even a question of holding the defendants responsible for not finding it. I'm not sure anybody would have necessarily found it. So the only question for me is if I'd known about it ahead of time, would I have said you can ask him about? And since you are already doing this deposition, the answer is yes.

MS. DAITZ: Your Honor, I just want to clarify with respect to the latter part of your ruling, that the premise is if we're already going to reopen this particular deposition, it's not giving plaintiffs carte blanche to Google witnesses after their depositions and use those documents as grounds for a second sitting.

THE COURT: The only thing that's in play now is the

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2 exhibit that was marked having to do with the blog, what was
3 mentioned in Mr. Beldock's letter, and anything that the
4 questioning flows from. I'm not, so you understand this, Mr.
5 Warren, if you got some minions to go out and do searches on
6 the web and found something else, don't spring it on the
7 defendants.

8 MR. WARREN: Judge, I --

9 THE COURT: Just, I don't expect that you --

10 MR. WARREN: I, respectfully, I don't operate in
11 that fashion, but I think that in the metaphorical sense a
12 gentle stream oftentimes turns into a wider river, oftentimes
13 turns into a lake, and ultimately goes to the ocean. And in
14 terms of discovery process, which your Honor so eloquently
15 referred to not long ago, that is the nature of a deposition.
16 And so I don't want to be unduly restricted as a result of
17 entering this stream with the hopes of going to that ocean. I
18 don't want to be unduly restricted by their subjective
19 perceptions of how I should be limited. I just, respectfully,
20 I'm requesting that your Honor agree with me on that point.

21 MS. DAITZ: I think, your Honor, that we all agree at
22 this point that going forward with respect to the Reynolds
23 deposition and any other deposition is that if there is a
24 basis for defendants to instruct the witness not to answer,
25 that we'll order, in the case of the Reynolds deposition, for

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some reason to end the deposition, that we'll promptly reach out to the Court in the first instance in the hopes of getting a ruling at that time.

THE COURT: Okay. And just a reminder, if you have, with the Reynolds deposition, anyone that you think might be potentially of interest to me, let me know when they're taking place. We don't work nine to five, we're here after that, so you can call us. If you call the law clerk, you can call the law clerk at six, seven, who knows when they'll be here. They may not go home as far as I know, they're here when I leave and they're here when I come in the morning.

And the reality is, is that even if I'm not here, if you call you may be able to reach me. So don't even, you know, there is no time that is actually off limits once you get the law clerk.

MR. WARREN: I guess, you know, my concern is that I don't want, from what I'm listening to from the other table, I don't want this to turn into an obstructive spitting contest, you know, where it's an attempt to violate the nature of the flow or the questions in the deposition. And whether it's intentional or otherwise.

And so I wouldn't want to belabor, I wouldn't want to, for example, be put in the situation where as a result of their recalcitrance, unfounded recalcitrance, we're forced to

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call you ever 10 minutes or every 15 minutes we're forced to call you to deal with these type of issues, or 5 minutes.

THE COURT: Well, okay, let me just say, the first time you call me will probably be the last time you get to call me, and whoever loses that probably won't get to call me again.

MS. NELSON: And I will say, your Honor, we've had depositions that we had to reopen and we have been very accommodating as to not only scheduling, but at deposition I don't believe we have ever engaged in the behavior that Mr. Warren is anticipating. And it's one of the reasons that we want to get the parameters clear now, so that we're all aware of it, so we go into this deposition, we all know what to anticipate.

THE COURT: Again, just so we'll understand that there, and I can't anticipate a situation where information could come to Mr. Warren, not necessarily even from the web, as he's asking about, as he's asking questions. I think you have to, you have to understand that that's not going to be necessarily a situation in which I'm going to say, well, you can't ask that question just because it came to you belatedly. The deposition will be reopened, I don't expect there to be any strange surprises, but I will let the deposition go where the flow takes it.

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MR. BELDOCK: May I, your Honor?

THE COURT: Yes.

MR. BELDOCK: There is, I thought I was going to raise this 15 minutes ago, there is one pressing issue, discovery cutoff is now, if I remember correctly, September 30th. Obviously, and we've discussed this, it can't be September 30th. And there is a difference of opinion on the two sides as to whether your Honor should set a cutoff date. It will be almost nine years since we started this case at the end of this year, it's three years of discovery. We appreciate the pressures, absolutely, on both sides, no matter what debates we have, the case is difficult, many witnesses, many papers and so on. And you have before you the problem of 8,000 papers, so I'm a little hesitant to say what I'm about to say, but I'm going to say it anyhow, we want a cutoff date at the end of the year, except for expert witnesses.

We want to be able to finish the depositions. We have maybe 15, 20 depositions --

THE COURT: And the City doesn't want a cutoff date? Is that what it is?

MR. WARREN: The City does not want a -- no. No, they don't want a cutoff date at the end of the year, that's our understanding.

MS. DAITZ: Your Honor, it's not that we want an

1
2 indefinite extension of discovery, we've agreed to request an
3 extension at the time until December 31st, but we don't believe
4 that we'll be able conclude all of the remaining discovery in
5 that time period. And part of the reason is not because
6 defendants are not -- you know, defendants are producing
7 witnesses, or producing documents, we've had a pretty
8 significant delay in getting the releases from plaintiffs that
9 we need, in getting documents from third parties in preparing
10 to take the plaintiffs' depositions. The plaintiffs just
11 requested another extension of time to respond to our
12 discovery request, which we consented to.

13 But the delays and the holdups to some extent, and
14 some have to do with joint applications or discovery
15 applications that we, you know, await a ruling, and then
16 before the depositions at that time. But defendants shouldn't
17 be in a position where plaintiffs can complete taking the
18 officer depositions by mid November and then we have six weeks
19 to do all the discovery that we need to do, even assuming, for
20 the sake of argument that we have all the information we need
21 at that time to move forward with the depositions that we need
22 to take.

23 So the only reason that we're anticipating that we
24 won't necessarily be able to complete all the fact discovery
25 by December 31st is, you know, pending the Court's ruling on

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the work product issue at the least, we have a number of witnesses that we'll need to prepare and produce for deposition and then still have all of these 14, 15 familial plaintiffs to take their depositions.

MS. NELSON: In addition to that, your Honor, I know your Honor is aware of the numerous depositions that the parties have indicated that we wanted to take, and I believe a couple of months ago plaintiffs added to that list. And we've been producing those witnesses for deposition, as well.

So they have added to their list, we've produced those people, in addition to the witnesses that they previously had on notice. We just don't believe it's realistic that we're going to finish everything by December 31st.

THE COURT: Okay, well, first of all, I think everybody wants to have an end to it, including Judge Batts, so we're going to set a discovery cutoff. But by the same token, I don't think any -- well, most of the District Judges don't want a case that is half prepared for discovery. So what we'll do is we'll set a discovery cutoff, and I know you have lots of work to do, but I need to know what's going to be happening, what needs to be done in discovery so that I could have some sense of whether or not you can make the deadline.

I mean I know you said some things here, but it's, you said that there have been additions, and I'm not exactly

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sure what you propose to do in the next three or four months.

MS. DAITZ: Your Honor, I would say we probably have in the vicinity of 30 to 40 depositions remaining.

THE COURT: And what's the difficulty in starting to schedule them now?

MS. DAITZ: Oh, we have, your Honor, we have depositions on the schedule and, in fact, the parties have even arranged to travel to certain correctional facilities to depose nonparty witnesses, including one in Western Pennsylvania in the coming weeks. So we certainly are all working together on the scheduling issues, and we, you know, broached the subject with plaintiffs again about just getting the last of the corrected releases and we're still awaiting, like I said, the responses from the IRS regarding the tax forms, and certainly of Daniel Wise.

And the parties are continuing cross productions of documents, we're awaiting plaintiffs' responses to defendant's last document request and interrogatories are due on September 15th. So upon receipt and review of that information, we should definitely be in the position to start scheduling the remaining familial plaintiffs' depositions, you know, in that time period. Assuming, because I'm an optimist, that there is no deficiencies in plaintiffs' responses and we take what we get and we'll be prepared to go forward at that time. And, if

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2 not, we'll certainly bring any issue to your Honor's attention
3 prior to whenever our next conference --

4 THE COURT: So you're going to attempt to schedule
5 to complete discovery, you're just not sure that you'll be
6 able to do it.

7 MS. DAITZ: We're just not sure that that's enough
8 time to get it done, your Honor, but we're making every
9 effort.

10 THE COURT: Anybody who makes a good faith effort
11 will always get my ear. Anything else?

12 MR. BELDOCK: The next conference date before your
13 Honor --

14 THE COURT: Yes.

15 MR. BELDOCK: And then maybe you can be, we can be
16 more informative as to what has to be done yet. Early
17 November I think would be a good amount of time to develop
18 what we're doing.

19 THE COURT: Okay. All right, tentatively, November
20 10th at 10:00. I don't actually have my trial calendar, but
21 we'll, if there is any change we'll let you know.

22 MR. BELDOCK: We'll bring Mr. Kendall back for that
23 day.

24 THE COURT: I think that might be cruel and unusual
25 punishment. Okay, we'll be adjourned and I'll get back to you

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with the --

MR. BELDOCK: Thank you.

MR. WARREN: Thank you, your Honor.

MS. DAITZ: Thank you, your Honor.

THE COURT: Don't forget to let me know when the
Reynolds deposition and the others are going to be.

(Whereupon the matter is adjourned to
November 10th, 2011 at 10:00 a.m.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, McCray, Richardson, et al. v., Docket #03cv9685 was prepared using mechanical transcription equipment and is a true and accurate record of the proceedings.

Signature_____

CAROLE LUDWIG

Date: September 13, 2011